

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

WENDELL DUNCAN

PETITIONER

V.

CIVIL ACTION NO.: 4:15cv157-SA-JMV

**STATE OF MISSISSIPPI and
ATTORNEY GENERAL JIM HOOD**

RESPONDENTS

**ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the Court, *sua sponte*, for consideration of the transfer of this cause. Wendell Duncan has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 1994 conviction and sentence for conspiracy and burglary of a business.

Duncan has filed at least one other unsuccessful § 2254 motion concerning the same sentence which he now seeks to challenge. *Duncan v. Mississippi*, 4:12cv31-GHD-DAS. The Antiterrorism and Effective Death Penalty Act requires that an applicant seeking to file a second or successive petition first “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Duncan has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED**:

1) That this petition shall be transferred to the Fifth Circuit Court of Appeals for the petitioner to seek permission to file this successive § 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(C), and *In re Epps*, 127 F.3d at 365; and

3) That this case is **CLOSED**.

THIS the 3rd day of November, 2015.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE